IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

SA.No. 773 of 1993(A)

AS.49/1991 of D.C. & SESSIONS COURT,KOLLAM
OS.403/1983 of MUNSIFF'S COURT, KARUNAGAPPALLY
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APPELLANT: 1ST RESPONDENT/1ST DEFENDANT:

VELAYUDHAN RAGHAVAN,
PULAYANTHARAYIL VEETTIL,
VADAKKUM MURIKIZHAKKU, THAZHAVA VILLAGE.

BY ADV. SRI.KRISHNA MANI.B.

RESPONDENTS: APPELLANTS/PLAINTIFFS 1 TO 5/RESPONDENTS 2 TO 4
DEFENDANTS 2 TO 4:
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1. **LALITHABHAI AMMA, ASHOKA BHAVAN, THENGAMOM MURI, PALLICKAL VILLAGE.**

2. **ASHOK KUMAR, S/O.KARUNAKARA KURUP OF ..DO....**

3. **ANITHA KUMARI, D/O.LALITHABHAI AMMA OF ...DO....**

4. **AJITH KUMAR (MINOR) S/O.KARUNAKARA KURUP OF ..DO....**

5. **ABHILASH (MINOR) S/O. KARUNAKARA KURUP OF ...DO...DO...**

   RESPONDENTS 4 AND 5 ARE MINORS ARE THE 1ST RESPONDENT MOTHER IS THEIR GUARDIAN.

6. **THANKAMMA, D/O.KOCHIRIKKALLY OF PULAYANTHARAYIL VEETTIL, VADAKKUM MURIKIZHAKKU, THAZHAVA VILLAGE.**

7. **RAJEEV KUMAR, ...DO...DO.....**

8. **PANCHAMI. RESIDING IN THE SHOP BUILDING OF PULAYAN THARAYIL RAGHAVAN, VADAKKU MURIKIZHAJJU THAZHAVA.**

   7TH RESPONDENT IS A MINOR AND IS REPRESENTED BY THE COURT GUARDIAN KUNJU RAMAN, CLERK, MUNSIFF'S COURT, KARUNAGAPPALLY.

BY ADV. SRI.M.BALAGOVINDAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.A.NO.773/1993

ORDER ON C.M.P.NO.1922/1993 IN S.A.NO.773/1993

DISMISSED

25/05/2007 **SD/- M.SASIDHARAN NAMBIAR, JUDGE**

/TRUE COPY/

KSS

M.SASIDHARAN NAMBIAR, J.

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S.A.No. 773 OF 1993

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DATED THIS THE 25th DAY OF MAY, 2007

JUDGMENT

First defendant in O.S.403 of 1983 on the file of Munsiff Court, Karunagappally is the appellant. Respondents 1 to 5 are the plaintiffs and other respondents, the other defendants in the suit. Respondents 6 to 8 are defendants 2 to 4. Respondents 1 to 5 instituted the suit seeking a decree for mandatory injunction against appellant to demolish plaint B schedule building and recover possession of the land with mesne profits. Plaint schedule property admittedly originally belonged to Saraswathy Amma, the mother of first respondent. Admittedly plaint A schedule property having an extent of ten square feet of land in a 12 cent plot in survey No.9001 of Thazhava Village was granted to Kesava Pillai Parameswara Pillai for the purpose of constructing a shop building on ground rent of Rs.24/- per annum and pursuant to the arrangement, Kesava Pillai Parameswara Pillai constructed a shop building. While so, he mortgaged the property in favour of the husband of Pathumma Kunju and put him in possession of the building. Later, under Ext.B1 sale deed dated 30.4.1962, Parameswara Pillai assigned

his rights in favour of Pathumma Kunju being the legal heir of the mortgagee. Subsequently Pathumma Kunju and others assigned the property in favour of appellant under Ext.B6 sale deed 3021/19 B6 dated 30.5.1971 in favour of the appellant. Appellant is in possession of the property. Respondents 1 to 5 instituted the suit contending that appellant has only right over the building which was constructed on an arrangement to pay ground rent and they are therefore entitled to get a decree for mandatory injunction as the period of ground rent arrangement was only 11 years. There was an averment in paragraph 11 of the plaint that appellant is a licensee and the arrangement was not a lease but license. Appellant in the written statement contended that lease was granted in favour of Kesava Pillai Parameswara Pillai for the purpose of putting up a shop building and pursuant to the rental arrangement Paramaswara Pillai put up a shop building and it was subsequently transferred in favour of the appellant by the transferee of the lessee and he is entitled to the protection of Section 106 of Kerala Land Reforms Act. Learned Munsiff referred the question of benefit claimed under Section 106 of Kerala Land Reforms Act claimed by the appellant to the Land Tribunal. The Land Tribunal, after recording the

evidence, rendered a finding to the effect that appellant is entitled to the protection of Section 106 of Kerala Land Reforms act. On receipt of the findings, as is bound to, learned Munsiff accepted the same and dismissed the suit. Respondents 1 to 5 challenged the decree and judgment before the District Court, Kollam in A.S.49 of 1991. Learned District Judge, on re-appreciation of evidence set aside the finding of the Land Tribunal following the decision of this court in Velayudhan Kesava Panicker & others V. Ibrahim Ismail Sait (1963(1) KLR 453) and held that the arrangement between Saraswathy Amma and Parameswara Pillai was not a lease but a license and therefore Section 106 of Kerala Land Reforms Act has no application and appellant is not entitled to the protection of the said provision. The appeal was allowed and the suit was decreed. The decree is being challenged in the second appeal.

2. The Second appeal was admitted formulating the following substantial questions of law.

i)Is it not clear from the evidence on record that the transaction dated 12.3.1128 ME between Saraswathy Amma and Parameswaran Pillai was a lease;

ii)Was the first appellate court correct in finding that appellant is

not entitled to the benefit of Section 106 of Kerala Land Reforms Act, ignoring the evidence on record.

3. Learned counsel appearing for the appellant and respondents were heard.

4. The fact that Saraswathy Amma had granted permission to Kesava Pillai Parameswaran Pillai to construct a shop building in the land with liability to pay ground rent and pursuant to the arrangement, Kesava Pillai Parameswaran Pillai had constructed a shop building was not in dispute. What was contended in the plaint was also that pursuant to the arrangement, Parameswaran Pillai constructed the building and paid ground rent as agreed and the period of the arrangement was 11 years and the said period expired and appellant being a subsequent assignee from the assignee of Parameswaran Pillai, is not entitled to continue in possession of the building and respondents 1 to 5 are entitled to the decree for mandatory injunction directing the appellant to demolish and remove the plaint B schedule property constructed by Parameswaran Pillai. The first appellate court unfortunately did not bear in mind the admitted facts and the evidence on record while resolving the dispute. Admitted land belonging to Saraswathy Amma was

granted to Parameswaran Pillai for the purpose of putting up a shop building therein with a liability to pay ground rent. Parameswaran Pillai had executed a rent deed in 1128 M.E. It was admittedly produced in court but was subsequently destroyed after it was not taken back after it was produced in O.S.280 of 1962 on the file of Munsiff Court, Karunagappally. That was a suit filed by Saraswathy Amma for arrears of rent, against Parameswaran Pillai and the subsequent assignee Pathumma Kunju. It was contended in that suit that it was a rental arrangement and rent was kept in arrears. Rent deed of 1128 ME was marked as Ext.P1 in Ext.P2 judgment in that suit. Admittedly it was not taken back and was destroyed. Learned District Judge, in view of the destruction of the original ground rent deed, relied on the other evidence and following the decision of a learned single Judge of this court in Velayudhan Kesava Panicker's case (supra) held that it was not a lease but a license.

5. It is clear that learned District Judge did not properly appreciate the evidence on record including the admission made by Saraswathy Amma under whom appellants claim title to the property. Ext.B2 judgment shows that O.S.280 of 1962 was filed

by Saraswathy Amma claiming arrears of rent on the allegation that the shop building was constructed by Parameswaran Pillai the first defendant therein, as per the rental arrangement evidenced by the rent deed dated 12.4.1128. There was no case that it was a license and not a lease. On the other hand, the specific case of Saraswathy Amma in O.S.280 of 1962 was that it was a lease arrangement whereunder land was entrusted to Parameswaran Pillai, first defendant therein, for the purpose of putting up a shop building and Parameswaran Pillai put up a building and was in possession of the same with liability to pay ground rent and had kept the ground rent in arrears. Appellant, after purchasing the property from Pathumma Kunju under Ext.B6, instituted O.S.247 of 1972 before Munsiff Court, Karungappally seeking a decree for injunction against respondents 1 to 3. Ext.B7 is the copy of the plaint therein. In paragraph 3 of that plaint, it was specifically pleaded by the appellant that land was obtained on lease with a liability to pay ground rent of Rs.24/- and that too for the purpose of putting up a shop building and pursuant to that lease, Parameswaran Pillai constructed the shop building and by subsequent assignment it is in the possession of the appellant and respondents are not

entitled to trespass into the same. Ext.B3 is the copy of the written statement filed by Saraswathy Amma and first appellant herein. In paragraph 5 of that written statement, it was unambiguously admitted by Saraswathy Amma and first appellant that the allegations in paragraph 3 to 6 including the relevant pleading in paragraph 3 of the plaint are admitted as correct. In the light of the pleadings in Ext.B7 and B3, it is not open to the appellant to contend that it was not a lease but only a license. Learned District Judge without considering the admitted facts and the evidence on record followed the decision in Velayudhan Panicker's case which was entirely on different facts. That was a case where temporary permission was granted to put up a building with a liability to pay a ground rent of Rs.12/- and interpreting the said rent deed the learned Single Judge held that it was not a lease but only a license. The facts of the present case establish that the arrangement between Saraswathy Amma and Parameshwara Pillai was not a license but a lease and the land was obtained by Parameswara Pilla for commercial purpose and the building was constructed pursuant to the lease much before 1967. As rightly found by the Land Tribunal and the trial court, appellant is entitled to the benefit of

Section 106 of Kerala Land Reforms Act. Respondents 1 to 5 are not entitled to get a decree for mandatory injunction.

6. The appeal is therefore allowed. The decree and judgment of the first appellate court are set aside and that of the trial court is restored. O. S.403 of 1983 on the file of Munsiff Court, Karungappally stands dismissed. No cost.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-